

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: POLYURETHANE FOAM ANTITRUST)	No. 10 MD 2196-JZ
LITIGATION)	
)	
THIS DOCUMENT RELATES TO:)	Hon. Jack Zouhary
INDIRECT PURCHASER ACTIONS)	
)	

**INDIRECT PURCHASER PLAINTIFFS' OPPOSITION TO THE
JOINT MOTION PURSUANT TO RULE 12(B) TO DISMISS THE INDIRECT
PURCHASER PLAINTIFFS' CONSOLIDATED AMENDED CLASS ACTION
COMPLAINT AS TO DEFENDANTS LEGGETT & PLATT, INCORPORATED,
MOHAWK INDUSTRIES, INC., CREST FOAM INDUSTRIES, INC., INOAC
USA INC., PLASTOMER CORPORATION, OHIO DECORATIVE PRODUCTS,
INC., AND OTTO BOCK POLYURETHANE TECHNOLOGIES, INC.**

The Indirect Purchaser Plaintiffs hereby oppose the Joint Motion to Dismiss filed by Defendants Leggett & Platt, Incorporated, Mohawk Industries, Inc., Crest Foam Industries, Inc., Inoac USA Inc., Plastomer Corporation, Ohio Decorative Products, Inc., and Otto Bock Polyurethane Technologies, Inc. (collectively "Joint Movants"). While they misleadingly style themselves as the "Unnamed Defendants," each and every one of them was explicitly named as a Defendant in the Indirect Purchaser Plaintiffs' Consolidated Amended Complaint ("CAC") (Dkt. No. 52).

There are only two Indirect Purchaser actions and both were filed, consolidated for all purposes and have been pending in this Court, even before the filing of the Joint Motion to Dismiss. Because Defendants took the position that they would not appear based on being named in the CAC, Plaintiffs filed a new action in this Court which names those added new Defendants in the CAC. Plaintiffs will request that the new action be consolidated with this consolidated case. Consequently, this Court will retain jurisdiction of all Indirect Purchaser Plaintiffs actions

even after the termination of pretrial proceedings under the MDL, and *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), does not apply. Nevertheless, the Joint Movants had taken the position, reflected in their chosen misnomer as the “Unnamed Defendants,” that they were not even properly named as Defendants in a complaint in this suit.

The “Unnamed Defendants” have joined in the Joint Motion to Dismiss and pursuant to the Amended Case Management Order (Dkt. No. 139) they presumably will file their respective appearances once Plaintiff satisfy the service terms of that Order. Plaintiff will cause Summons to issue for the foreign Japanese Defendants.

Defendants’ arguments, therefore, are moot and their motions to dismiss should be denied summarily.

In support of their opposition to the Joint Motion to Dismiss, Plaintiffs rely upon the Indirect Purchaser Plaintiffs’ Opposition To Defendants’ Joint “Common Issues” Memorandum Of Law In Support Of Defendants’ Motion To Dismiss Indirect Purchaser Plaintiffs’ Consolidated Amended Complaint, which is being filed concurrently, and also adopt the arguments made in the Direct Purchaser Plaintiffs’ Opposition To Defendants’ Joint Common Issues Memorandum In Support Of Motions To Dismiss Direct Purchaser Plaintiff’s Consolidated Amended Class Action Complaint (Dkt. No. 115) and the Direct Purchaser Plaintiffs’ Omnibus Response To Defendants’ Separately Filed Memoranda In Support Of Their Motions To Dismiss (Dkt. No. 114) to the extent that they are applicable to the issues in the

motions to dismiss here.

May 23, 2011

Plaintiffs,

/s/ Marvin A. Miller

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CERTIFICATE OF SERVICE

I, Marvin A. Miller, certify that on May 23, 2011, in accordance with Paragraph 9 of the Initial Case Management Order entered January 20, 2011, I served the foregoing.

s/Marvin A. Miller